Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1993

GORDON MCLEAN CAMPBELL, PETITIONER

V.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Gordon McLean Campbell

Petitioner

1514 Bellevue Avenue

#210

Seattle, Washington 98122

37pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether, where the United States court of appeals has held in Dear v. Rathje (1973) 485 F. 2d 558 that issuance of summons is mandatory under rule 4(a), federal rules of civil procedure, respondent dismisses petitioner's amended complaint without prejudice and without issuing a summons and, on appeal, it is held that the dismissal without prejudice is not a final, appealable order, the court below erred in not issuing a writ of mandamus to respondent directing issuance of summons to petitioner on his petition for said writ.

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In The

Supreme Court of the United States

October term 1993

Gordon McLean Campbell, petitioner

v.

United States district court western district of Washington, respondent

Petition for writ of certiorari to the United States court of appeals for the ninth circuit

OPINIONS BELOW

No opinions were reported below.

JURISDICTION

The order sought to be reviewed was entered on April 8, 1994.

Jurisdiction in this court is given by 28 U. S. C. #1254.

RULES INVOLVED

28 U. S. C. (1988 edition) Appendix rule 4(a), federal rules of civil procedure SUMMONS: ISSUANCE. Upon the filing of the

complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

Rule 4(b), federal rules of civil procedure, U. S. Code Congressional & Administrative News, No. 4, June 1993, p. G142, effective December 1, 1993.

Summons Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

STATEMENT OF THE CASE

Petitioner filed complaint in U. S. district court seeking to enjoin the Washington state bar association from enforcing the decision in In re Gordon McLean Campbell 1968, 74 Wn2d 276, 444 P. 2d 784, alleging that this case held that there is no right to a job. Petitioner further alleged that a subsequent federal statute, 15 U. S. C. #1021 et seq., had overruled the state court decision by granting every person a right to a job.

Petitioner further alleged subsequent political events showing that suing for a job was a valid political belief and theory.

Petitioner further alleged facts showing that a false death certificate had been used to hinder his efforts to appeal in In re Gordon McLean Campbell, supra,.

By a minute order dated June 9, 1993, the district court dismissed the complaint without prejudice and without issuing a summons. Petitioner was given 30 days to file an amended complaint.

On June 29, 1993, within the 30 day period, petitioner filed an amended complaint setting forth his claim in greater detail.

By a minute order dated July 19, 1993, the district court dismissed the amended complaint without prejudice and without issuing a summons.

Jurisdiction in the district court was based on 28 U. S. C. #1331 which confers jurisdiction when a federal statute is involved. Petitioner's complaints sought to enjoin enforcement of a state court decision by the defendant because a subsequent federal statute, 15 U. S. C #1021, had overruled the decision under the supremacy clause of the U. S. constitution.

Jurisdiction in the district court was also based on the 1st amendment and 14th amendment, section 1, U. S. constitution. In his complaints, petitioner contended that a false death certificate had been used to hinder his efforts to defend a proceeding to transfer him to the inactive roll of

attorneys.

Petitioner also alleged facts showing that prior and subsequent political events had demonstrated that his suits for a job, for which he was transferred inactive, expressed a valid political belief protected from infringement by the 1st and 14th amendments.

On August 10, 1993, petitioner filed notice of appeal to the ninth circuit court of appeals.

On December 20, 1993, a panel of the court of appeals for the ninth circuit dismissed the appeal, holding that the dismissal without prejudice by the lower court was not a final appealable order.

On January 27, 1994, petitioner's petition for rehearing and suggestion of rehearing en banc was denied.

On March 24, 1994, petitioner filed a petition for writ of mandamus with the ninth circuit court of appeals asking that a writ

of mandamus be granted directing respondent to issue summons in petitioner's case against the Washington state bar association.

On April 8, 1994, the petition was denie

At the time petitioner's suit for injunction was filed, it was the practice of the clerk's office of the U. S. district cour western district of Washington not to issue summons in pro se cases without first referring the complaint to a judge.

Petitioner's complaint was filed pro se.

REASONS FOR ALLOWANCE OF THE WRIT

ISSUANCE OF SUMMONS IS MANDATORY

Petitioner's complaint was filed May 27, 1993. At this time, rule 4(a), federal rules of civil procedure read as follows:

> SUMMON: ISSUANCE. Upon filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the

plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

At the time the complaint was filed, petitioner attempted to obtain a summons. Instead, the complaint was referred to the judge assigned to the case. Although petitioner tried several times to procure a summons, the amended complaint was dismissed without prejudice without a summons ever being issued.

Petitioner's complaint was filed pro se and, at the time it was filed, it was the practice of the clerk's office not to issue summons in pro se cases without first referring the complaint to a judge.

In Dear v. Rathje (1973) 485 F.2d 558, an analagous case where a pro se case was dismissed without issuing a summons,

the court of appeals held that issuance of summons is mandatory under rule 4(a), federal rules of civil procedure.

At page 560, the court said:

> We do not reach the merits of the order dismissing the complaint. To do so, we should have to deliver an advisory opinion, for until defendants have been summoned to appear and given some opportunity to respond to the complaint, we cannot know that there is a live controversy between the parties.
>
> It appears that a pattern of practice has developed in the Clerk's office in which summons are not issued when a pro se complaint is filed. The same practice occurred in Vina v. Hub Electric Co., 480 F.2d 1139 (7th Cir. 1973). We do not need to reach the issue of whether the practice is constitutional since it

is possible to decide the appeal on other grounds. The practice here as in Vina is in clear conflict with Rule 4(a), Fed. R. Civ. P. which imposes a duty on the Clerk to issue the summons "forthwith". Sires v. Cole, 320 F. 2d 877, 879 n. 2 (9th Cir. 1963); Jefferson v. Stockholders Publishing Co., 194 F. 2d 281, 282 (9th Cir. 1952)."

Effective December 1993, rule 4(a), federal rules of civil procedure, was re-enacted without change material here as rule 4(b) reading as follows:

> Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons

> if addressed to multiple defendants, shall be issued for each defendant to be served.

Therefore, issuance of summons is mandatory under the federal rules of civil procedure.

A WRIT OF MANDAMUS SHOULD HAVE BEEN ISSUED BY THE COURT BELOW

Since issuance of summons is mandatory, a writ of mandamus sould have been issued by the court below directing respondent to issue summons in petitioner's suit for injunction. A writ of mandamus, of course, lies to require the doing of mandatory acts. Ex Parte Kawato (1942) 317 U. S. 69, 87 L. Ed. 58, 63 S. Ct. 115. In this case, at 317 U. S. 71, the court said:

> Unless the action was properly abated for the reasons set out in the motion and the court's order, the petitioner is entitled to have the District Court proceed with his

action and pass upon the sufficiency of his allegations. This is an essential step in an orderly trial leading to a final judgment from which an appeal will lie to correct errors. If the court's order of abatement was erroneous, mandamus is the appropriate remedy. 28 U. S. C. 377; McClellan v. Carland, 217 U. S. 268, 279-282; Ex parte Metropolitan Water Co., 220 U. S. 539, 546.

In the case cited in the order of the court below (from which certiorari is sought) five guidelines are set forth to be used in determining whether mandamus should issue. The cited case is Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977) and the guidelines are as follows at 557 F2d 654, 655:

(1) The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief

he or she desires. (citations omitted)

(2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first.) (citations omitted)

(3) The district court's order is clearly erroneous as a matter of law. (citations omitted)

(4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. (citations omitted)

(5) The district court's order raises new and important problems, or issues of law of first impression. (citations omitted)

In the Bauman case, the court held that all five guidelines pointed against the issuance of the writ.

In the present case, it is clear that the

guidelines indicate that the writ should be granted.

Applying the first guideline here, it is evident that, since petitioner had no right of appeal (his appeal had been dismissed because no final, appealable order had been entered by respondent), mandamus was the only relief open to him to obtain a summons.

Applying the second guideline here, petitioner would be damaged or prejudiced in a way not correctable on appeal (as shown, his appeal had been dismissed by the court below) since he would be denied a hearing on the merits (including the right of appeal) on his complaint seeking to enjoin enforcement of the state court decision transferring him to the inactive roll of attorneys.

Applying the third guideline, respondent's order (dismissing petitioner's amended complaint without issuing a summons) is clearly erroneoue as a matter of law since

the court of appeals in Dear v Rathje (1973) (7th Cir.) 485 F.2d 558, supra, held that issuance of summons is mandatory.

Applying the fourth guideline, respondent's order is an oft-repeated error and manifests a persistent disregard of the federal rules.

As shown earlier, at the time petitioner's complaint was filed, it was the practice of the clerk's office of respondent not to issue summons in pro se cases without first referring the complaint to a judge. Petitioner's complaint was filed pro se.

In Dear v. Rathje, supra, the court of appeals held that issuance of summons is mandatory under rule 4(a), federal rules of civil procedure.

The fifth guideline is not applicable here since no new problems are involved or issues of law of first impression. In Bauman, at 557 F.2d at 655, it is stated that rarely if ever will a case arise where

each guideline is relevant or applicable.

In Bauman, as noted earlier, it was held that all guidelines pointed against the issuance of the writ.

Here, the first four guidelines indicate that the writ should be granted and the fifth is not applicable.

Thus, according to the guidelines set forth in the case cited in the order of the court below from which certiorari is sought, the writ of mandamus should have been granted by the court below.

Because of the foregoing reasons and authorities, the writ of mandamus should have been granted by the court below.

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APPENDIX

United States court of appeals

for the ninth circuit

Gordon McLean Campbell, Petitioner, vs. United States district court for the western district of washington, respondent.	)	No. 94-70125 DC# CV-93-00719-TSZ Washington (Seattle)

ORDER

Filed Aril 8, 1994

Before: POOLE, BEEZER and T. G. NELSON, Circuit Judges

Petitioner has not demonstrated that this case warrants intervention of this court by means of the extraordinary remedy of mandamus. See Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition for writ of mandamus is denied.

No motions for reconsideration, rehear-

ing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GORDON MCLEAN CAMPBELL, Plaintiff-Appellant, v. WASHINGTON STATE BAR ASSOCIATION, Defendant-Appellee.	) No. 93-35773) D.C. No. CV-93-00719-TSZ) MEMORANDUM*) Entered December 20, 1993

Appeal from the United States District Court for the Western District of Washington Thomas S. Zilly, District Judge, Presiding

Submitted December 6, 1993**

Before: SNEED, NOONAN, and TROTT, Circuit Judges.

Gordon McLean Campbell appeals pro se the district court's dismissal of his com-

plaint without prejudice for failure to set forth the basis for the court's jurisdiction and venue and the basis for his legal claims. We dismiss the appeal for lack of jurisdiction.

The district court dismissed Campbell's complaint without prejudice. Therefore, we do not have jurisdiction to hear this appeal under 28 U.S.C. #1291 because the district court did not enter a final appealable order. See Hoohuli v. Ariyoshi, 741 F.2d 1169, 1171 n.1 (9th Cir. 1984) ("an order dismissing a complaint but not dismissing the action is not appealable under section 1291").

DISMISSED.[1/]

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case

suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4. 1/ We deny as moot Campbell's motion to expedite.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GORDON MCLEAN CAMPBELL, Plaintiff-Appellant, v. WASHINGTON STATE BAR ASSOCIATION, Defendant-Appellee.	No. 93-35773 D.C. No. CV-93-00719-TSZ Western Washington (Seattle) ORDER Filed January 27, 1994

Before: SNEED, NOONAN, and TROTT, Circuit Judges.

The panel has voted to deny Appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to

rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

GORDON MCLEAN CAMPBELL, Plaintiff, v. WASHINGTON STATE BAR ASSOCIATION, Defendant.	)	NO. C93-719Z MINUTE ORDER Entered June 9th, 1993

The following minute order is made by direction of the court, the honorable Thomas S. Zilly, U. S. district judge:

The court, having reviewed the plaintiff's complaint, finds that plaintiff's complaint is not properly pled. The court

will dismiss plaintiff's complaint without prejudice unless plaintiff files an amended complaint setting forth the basis for the court's jurisdiction and venue, and a concise statement of facts and legal claims within 30 days of the date this minute order is entered.

The Clerk of the Court is directed to send a copy of this minute order to all counsel of record.

Filed and entered this 9th day of June, 1993.

BRUCE RIFKIN, Clerk
By Jill Gibbs for
Casey Condon
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE.

GORDON MCLEAN CAMPBELL,) No. C93-719Z
Plaintiff,) Minute order
v.)

WASHINGTON STATE BAR)
ASSOCIATION,) Entered July 20, 1993
Defendant.)

The following minute order is made by direction of the court, the honorable Thomas S. Zilly, U. S. district judge:

The court, having reviewed the plaintiff's amended complaint and having considered all materials submitted by the plaintiff, finds that the plaintiff has not set forth the basis for the court's jurisdiction, venue or legal claims as required by the minute order dated June 9, 1993 (docket no. 2). The court hereby DISMISSES plaintiff's complaint without prejudice.

The Clerk of the Court is directed to send a copy of this minute order to all counsel of record.

Filed and entered this 19th day of July, 1993.

BRUCE RIFKIN, Clerk

By s/ Casey Condon

Casey Condon

Deputy Clerk

United States District Court,

Western District of Washington

Gordon McLean Campbell, plaintiff	)	No. C93-719
v.	)	Plaintiff's
Washington state bar Association, defendant	)	Complaint

1. This suit arises under 15 U. S. C. #1021 and the 1st and 14th amendments, U. S. constitution.

2. Plaintiff is a resident of Seattle, King county, Washington.

3. Defendant is a resident of the state of Washington with its principal office in Seattle.

I

1. In a decision of the Washington supreme court in 1968, In re Gordon McLean Campbell, 74 Wn2d 276, 444 P. 2d 784, it was held that a person did not have a right to a job. This decision is enforced by defendant.

2. In 1978, The Full Employment and Balanced Growth Act of 1978 was enacted, 15 U. S. C. #1021 et seq.. This law gave every American a right to a job. 15 U. S. C. #1021 (b) is as follows:

> "The Congress further declares and establishes as a national goal the fullfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work."

II

1. In 1975, it was proposed in Congress to grant every American a right to a job and

to add a "right to sue" provision authorizing suit in U. S. district court to obtain a job. S. 50 (January 15, 1975), #2 and 5(h); 121 Cong. Rec. 298-302.

Guaranteed jobs for all Americans was the number one plank in the democratic platform in the presidential campaign of 1975. The democrats won the election.

III

1. In 1964, a death certificate was filed for John Kennett, a member of defendant. During the period from 1964 to 1967, John Kennett drove a taxicab about Seattle. Plaintiff was around Seattle during this period promulgating a new discovery regarding the air which is referred to in the opinion of In re Gordon McLean Campbell (see count one). In 1967, while plaintiff was briefing in the King county law library in Seattle for his appeal in this case, John Kennett appeared in the law library shouting until told to be quiet.

Wherefore, plaintiff asks that defendant be enjoined from enforcing the decision in In re Gordon McLean Campbell.

Dated at Seattle this 27th day of May, 1993.

S/ Gordon McLean Campbell

United States District Court,
Western district of Washington
Civil action, File number C93-719Z

Gordon McLean Campbell, plaintiff	)	Plaintiff's amended complaint
v.	)	
Washington state bar association, defendant	)	

---

1. The action arises under the Act of Feb. 20, 1946, ch. 33, #2, 60 Stat. 23; Oct. 27, 1978, Pub. L. 95-523, title I, #102, 92 Stat. 1890, U. S. C., Title 15, #1021; the 1st amendment to the constitution of the

United States; the 14th amendment to the constitution of the United States, section 1; the constitution of the United States, Article VI, paragraph 2, as hereinafter more fully appears.

2. Plaintiff is a resident of Seattle, King county, Washington.

3. Defendant is an agency of the state of Washington with principal offices in Seattle.

4. In a decision of the Washington supreme court in 1968, In re Gordon McLean Campbell, 74 Wn.2d 276, 444 P. 2nd 784, it was held that a person did not have a right to a job. Plaintiff had brought four suits (which were dismissed) in which he sued financialy able attorneys to obtain a job.

5. Defendant brought proceedings to transfer plaintiff to the inactive roll of attorneys based on the suits by plaintiff. The proceedings were also based on a new discovery plaintiff had been promulgating that the air is alive, an intelligent form

of life, God or part of God, with live, voluntary, controlled movement. This was a new explanation for the movement of the air supported by the uncertainty regarding the cause of said movement. The discovery arose from plaintiff's personal experience of hearing the voice of God speak to plaintiff from out of the adjacent air. In the proceeding, before the state supreme court, plaintiff supported the discovery with United States v. Ballard (1944), 322 U. S. 78, 88 L. Ed. 1148, 64 S. Ct. 882 in which it was held that the contention that Jesus Christ came down to earth and spoke to 20th century humans was a valid religious belief and experience.

6. In the proceeding, before the hearing panel, plaintiff contended that his constitutional right to a job was enforceable in court pursuant to the right-remedy rule which states that a right without a remedy is no right at all. One of the two witnesse

presented by defendant regarding plaintiff's suits testified that there is no right to a job. The other witness, Judge Agnew of the King county superior court, testified that the right-remedy rule is a valid rule but declined to recognize that the right to a job is enforceable pursuant to said rule as plaintiff had sought to do. Therefore, according to the rule, Judge Agnew did not believe the right to a job was an actual right.

7. The state supreme court, in In re Gordon McLean Campbell (1968) 74 Wn 2d 276, 444 P. 2d 784, affirmed the decision of the hearing panel transferring plaintiff to the inactive roll. The holding was based on the record of the proceedings before the hearing panel. Thus, the state supreme court held that plaintiff's suits for a job could not be maintained because, although the right-remedy rule was valid, no right to a job existed. Plaintiff's discovery regarding the air was

left totally out of consideration in reaching the decision.

8. In 1978, The Full Employment and Balanced Growth Act of 1978 was enacted, 15 U. S. C. #1021 et seq.. 15 U. S. C. #1021 (b) is as follows:

> "The Congress further declares and establishes as a national goal the fullfillment of the right to full opportunities for for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work."

The preamble to the Full Employment and Balanced Growth Act of 1978, Pub. L. 95-523 (H. R. 50, 92 Stat. 1887, Oct. 27, 1978, is as follows:

> "An Act to translate into practical reality the right of all Americans who are able, willing, and seeking to work to full

opportunity for useful paid employment at fair rates of compensation;....."

9. In 1975, it was proposed in Congress to grant every American a right to a job and to add a "right to sue" provision authorizing suit in U. S. district court to obtain a job. S. 50 (January 15, 1975), #2 and 5(h); 121 Cong. Rec. 298-302.

10. The right to sue for a job was the number one plank in the democratic platform in the presidential campaign of 1975. The democrats won the election.

11. During the administration of Franklin D. Roosevelt, the United States experienced guaranteed employment.

12. In 1964, a death certificate was filed for John Kennett, a member of defendant. During the period from 1964 to 1967, he drove a taxicab about Seattle. Plaintiff was around Seattle during this period promulgating his discovery regarding the air referred to in

Paragraph 5 herein. In 1967, while plaintiff was briefing in the King county law library in Seattle his appeal in the proceeding, John Kennett appeared in the law library shouting until told to be quiet.

Wherefore, plaintiff requests that defendant be enjoined from enforcing the decision in In re Gordon McLean Campbell.

Dated at Seattle this 29th day of June, 1993.

s/ Gordon McLean Campbell

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